

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 99- 9058

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## FINAL APPROVAL OF RULE 12 OF THE TEXAS RULES OF JUDICIAL ADMINISTRATION AND OF CANON 3(C)(5) OF THE CODE OF JUDICIAL CONDUCT

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**ORDERED** that:

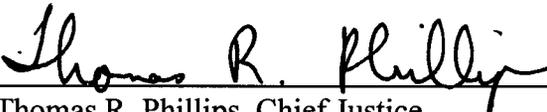
1. Rule 12 of the Texas Rules of Judicial Administration, promulgated by Order in Misc. Docket No. 98-9170, dated October 8, 1998, 61 Tex. Bar J. 994 (Nov. 1998), pursuant to Article V, Section 31(a) of the Texas Constitution and Section 74.024 of the Texas Government Code, is modified to reflect public comments and other changes and is adopted as attached, effective April 1, 1999.

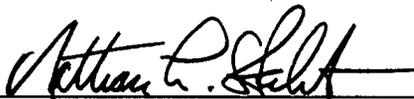
2. Canon 3(C)(5) of the Texas Code of Judicial Conduct is added as follows: "A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule."

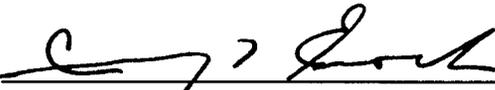
3. The comments appended to Rule 12 are intended to inform the construction and application of these rules.

4. The Clerk is directed forthwith to file a copy of this Order with the Secretary of State, to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*, and to send a copy of this Order to each elected member of the Legislature.

SIGNED AND ENTERED this 24th day of March, 1999.

  
Thomas R. Phillips, Chief Justice

  
Nathan L. Hecht, Justice

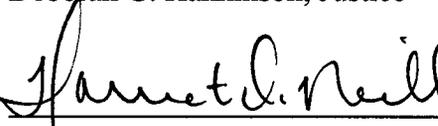
  
Craig T. Enoch, Justice

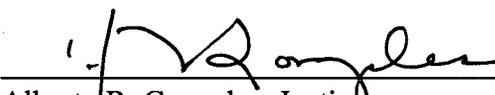
  
Priscilla R. Owen, Justice

  
James A. Baker, Justice

  
Greg Abbott, Justice

  
Deborah G. Hankinson, Justice

  
Harriet O'Neill, Justice

  
Alberto R. Gonzales, Justice

## RULES OF JUDICIAL ADMINISTRATION

### RULE 12. PUBLIC ACCESS TO JUDICIAL RECORDS

**12.1 Policy.** The purpose of this rule is to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to achieve its purpose.

**12.2 Definitions.** In this rule:

- (a) *Judge* means a regularly appointed or elected judge or justice.
- (b) *Judicial agency* means an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court. A task force or committee created by a court or judge is a “judicial agency”.
- (c) *Judicial officer* means a judge, former or retired visiting judge, referee, commissioner, special master, court-appointed arbitrator, or other person exercising adjudicatory powers in the judiciary. A mediator or other provider of non-binding dispute resolution services is not a “judicial officer”.
- (d) *Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.
- (e) *Records custodian* means the person with custody of a judicial record determined as follows:
  - (1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a

particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.

- (2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.
- (3) The judicial records of a judicial officer not covered by subparagraphs (1) and (2) are in the custody of that officer.
- (4) The judicial records of a judicial agency are in the custody of its presiding officer, who must act under this rule in accordance with agency policy or the vote of a majority of the members of the agency.

**12.3 Applicability.** This rule does not apply to:

- (a) records or information to which access is controlled by:
  - (1) a state or federal court rule, including:
    - (A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;
    - (B) a rule of appellate procedure;
    - (C) a rule of evidence;
    - (D) a rule of administration;
  - (2) a state or federal court order not issued merely to thwart the purpose of this rule;
  - (3) the Code of Judicial Conduct;
  - (4) Chapter 552, Government Code, or another statute or provision of law;

- (b) records or information to which Chapter 552, Government Code, is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B);
- (c) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:
  - (1) a state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence; or
  - (2) common law, court order, judicial decision, or another provision of law
- (d) elected officials other than judges.

#### 12.4 Access to Judicial Records.

- (a) **Generally.** Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. But this rule does not require a court, judicial agency, or records custodian to:
  - (1) create a record, other than to print information stored in a computer;
  - (2) retain a judicial record for a specific period of time;
  - (3) allow the inspection of or provide a copy of information in a book or publication commercially available to the public; or
  - (4) respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.
- (b) **Voluntary disclosure.** A records custodian may voluntarily make part or all of the information in a judicial record available to the public, subject to Rules 12.2(e)(2) and 12.2(e)(4), unless the disclosure is expressly prohibited by law or exempt under this rule, or the information is confidential under law. Information voluntarily disclosed must be made available to any person who requests it.

**12.5 Exemptions from Disclosure.** The following records are exempt from disclosure under this rule:

- (a) ***Judicial work product and drafts.*** Any record that relates to a judicial officer's adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.
- (b) ***Security plans.*** Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury.
- (c) ***Personnel information.*** Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.
- (d) ***Home address and family information.*** Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.
- (e) ***Applicants for employment or volunteer services.*** Any records relating to an applicant for employment or volunteer services.
- (f) ***Internal deliberations on court or judicial administration matters.*** Any record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency, on matters of court or judicial administration.
- (g) ***Court law library information.*** Any record in a law library that links a patron's name with the materials requested or borrowed by that patron.
- (h) ***Judicial calendar information.*** Any record that reflects a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy.
- (i) ***Information confidential under other law.*** Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

- (1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;
  - (2) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or
  - (3) a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.
- (j) ***Litigation or settlement negotiations.*** Any judicial record relating to civil or criminal litigation or settlement negotiations:
- (1) in which a court or judicial agency is or may be a party; or
  - (2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person's office or employment.
- (k) ***Investigations of character or conduct.*** Any record relating to an investigation of any person's character or conduct, unless:
- (1) the record is requested by the person being investigated; and
  - (2) release of the record, in the judgment of the records custodian, would not impair the investigation.
- (l) ***Examinations.*** Any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

## 12.6 Procedures for Obtaining Access to Judicial Records.

- (a) ***Request.*** A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agent for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information.
- (b) ***Time for inspection and delivery of copies.*** As soon as practicable — and not more than 14 days — after actual receipt of a request to inspect or copy a judicial record,

if the record is available, the records custodian must either:

- (1) allow the requestor to inspect the record and provide a copy if one is requested; or
  - (2) send written notice to the requestor stating that the record cannot within the prescribed period be produced or a copy provided, as applicable, and setting a reasonable date and time when the document will be produced or a copy provided, as applicable.
- (c) ***Place for inspection.*** A records custodian must produce a requested judicial record at a convenient, public area.
- (d) ***Part of record subject to disclosure.*** If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested.
- (e) ***Copying; mailing.*** The records custodian may deliver the record to a court clerk for copying. The records custodian may mail the copy to a requestor who has prepaid the postage.
- (f) ***Recipient of request not custodian of record.*** A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response prescribed in Rule 12.6(b) does not begin to run until the referral is actually received by the records custodian. If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.
- (g) ***Inquiry to requestor.*** A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. But a records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

- (h) ***Uniform treatment of requests.*** A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

## **12.7 Costs for Copies of Judicial Records; Appeal of Assessment.**

- (a) ***Cost.*** The cost for a copy of a judicial record is either:
  - (1) the cost prescribed by statute, or
  - (2) if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the General Services Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.
- (b) ***Waiver or reduction of cost assessment by records custodian.*** A records custodian may reduce or waive the charge for a copy of a judicial record if:
  - (1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or
  - (2) the cost of processing collection of a charge will exceed the amount of the charge.
- (c) ***Appeal of cost assessment.*** A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record.
- (d) ***Records custodian not personally responsible for cost.*** A records custodian is not required to incur personal expense in furnishing a copy of a judicial record.

## **12.8 Denial of Access to a Judicial Record.**

- (a) ***When request may be denied.*** A records custodian may deny a request for a judicial record under this rule only if the records custodian:

- (1) reasonably determines that the requested judicial record is exempt from required disclosure under this rule; or
  - (2) makes specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.
- (b) ***Time to deny.*** A records custodian who denies access to a judicial record must notify the person requesting the record of the denial within a reasonable time — not to exceed 14 days — after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6(b)(2).
- (c) ***Contents of notice of denial.*** A notice of denial must be in writing and must:
- (1) state the reason for the denial;
  - (2) inform the person of the right of appeal provided by Rule 12.9; and
  - (3) include the name and address of the Administrative Director of the Office of Court Administration.

#### **12.9 Relief from Denial of Access to Judicial Records.**

- (a) ***Appeal.*** A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.
- (b) ***Contents of petition for review.*** The petition for review:
- (1) must include a copy of the request to the record custodian and the records custodian's notice of denial;
  - (2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and
  - (3) may contain a request for expedited review, the grounds for which must be stated.

- (c) ***Time for filing.*** The petition must be filed not later than 30 days after the date that the petitioner receives notice of a denial of access to the judicial record.
- (d) ***Notification of records custodian and presiding judges.*** Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition.
- (e) ***Response.*** A records custodian who denies access to a judicial record and against whom relief is sought under this section may — within 14 days of receipt of notice from the Administrative Director — submit a written response to the petition for review and include supporting facts and authorities in the response. The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection any record, or a sample of records, to which access has been denied.
- (f) ***Formation of special committee.*** Upon receiving notice under Rule 12.9(a)(3), the presiding judges must refer the petition to a special committee of not less than five of the presiding judges for review. The presiding judges must notify the Administrative Director, the petitioner, and the records custodian of the names of the judges selected to serve on the committee.
- (g) ***Procedure for review.*** The special committee must review the petition and the records custodian's response and determine whether the requested judicial record should be made available under this rule to the petitioner. The special committee may request the records custodian to submit for in camera inspection a record, or a sample of records, to which access has been denied. The records custodian may respond to the request in whole or in part but it not required to do so.
- (h) ***Considerations.*** When determining whether the requested judicial record should be made available under this rule to petition, the special committee must consider:
  - (1) the text and policy of this Rule;
  - (2) any supporting and controverting facts, arguments, and authorities in the petition and the response; and
  - (3) prior applications of this Rule by other special committees or by courts.

- (i) ***Expedited review.*** On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.
- (j) ***Decision.*** The special committee's determination must be supported by a written decision that must:
  - (1) issue within 60 days of the date that the Administrative Director received the petition for review;
  - (2) either grant the petition in whole or in part or sustain the denial of access to the requested judicial record;
  - (3) state the reasons for the decision, including appropriate citations to this rule; and
  - (4) identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.
- (k) ***Notice of decision.*** The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:
  - (1) immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice; and
  - (2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.
- (l) ***Publication of decisions.*** The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions.
- (m) ***Final decision.*** A decision of a special committee under this rule is not appealable but is subject to review by mandamus.
- (n) ***Appeal to special committee not exclusive remedy.*** The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus.

**12.10 Sanctions.** A records custodian who fails to comply with this rule, knowing that the failure

to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct.

#### COMMENTS

1. Although the definition of “judicial agency” in Rule 12.2(b) is comprehensive, applicability of the rule is restricted by Rule 12.3. The rule does not apply to judicial agencies whose records are expressly made subject to disclosure by statute, rule, or law. An example is the State Bar (“an administrative agency of the judicial department”, Tex. Gov’t Code § 81.011(a)), which is subject to the Public Information Act. Tex. Gov’t Code § 81.033. Thus, no judicial agency must comply with both the Act and this rule; at most one can apply. Nor does the rule apply to judicial agencies expressly excepted from the Act by statute (other than by the general judiciary exception in section 552.003(b) of the Act), rule, or law. Examples are the Board of Legal Specialization, Tex. Gov’t Code § 81.033, and the Board of Disciplinary Appeals, Tex. R. Disciplinary App. 7.12. Because these boards are expressly excepted from the Act, their records are not subject to disclosure under this rule, even though no law affirmatively makes their records confidential. The Board of Law Examiners is partly subject to the Act and partly exempt, Tex. Gov’t Code § 82.003, and therefore this rule is inapplicable to it. An example of a judicial agency subject to the rule is the Supreme Court Advisory Committee, which is neither subject to nor expressly excepted from the Act, and whose records are not made confidential by any law.

2. As stated in Rule 12.4, this rule does not require the creation or retention of records, but neither does it permit the destruction of records that are required to be maintained by statute or other law, such as Tex. Gov’t Code §§ 441.158-.167, .180-.203; Tex. Local Gov’t Code ch. 203; and 13 Tex. Admin. Code § 7.122.

3. Rule 12.8 allows a records custodian to deny a record request that would substantially and unreasonably impede the routine operation of the court or judicial agency. As an illustration, and not by way of limitation, a request for “all judicial records” that is submitted every day or even every few days by the same person or persons acting in concert could substantially and unreasonably impede the operations of a court or judicial agency that lacked the staff to respond to such repeated requests.



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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JUSTICES  
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HARRIET O'NEILL  
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CLERK  
JOHN T. ADAMS

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T  
JIM HUTCHESON

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

April 8, 1999

Office of the Secretary  
of State  
Statutory Filings Division  
1019 Brazos Street  
Austin, Texas 78701

RE: Order of the Supreme Court of Texas No. 99-9058, Apr. 24,  
1999.

Pursuant to the order of the Court, I am forwarding the attached  
copy of the referenced order for filing as appropriate.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.



# THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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April 8, 1999

Ms. Kelley King, Editor  
The Texas Bar Journal  
1515 Colorado Street  
Austin, Texas 78701

RE: Order of the Supreme Court of Texas No. 99-9058, Mar. 24, 1999.

Pursuant to the order of the Court, I am forwarding the attached copy of the referenced order for publication in the Texas Bar Journal as soon as possible.

Sincerely,  
**SIGNED**

John T. Adams  
Clerk

Encl.